

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
Hongkong Post – United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2014-4

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH HONGKONG POST)

(Issued January 29, 2014)

I. INTRODUCTION

On December 24, 2013, the Postal Service filed notice, pursuant to 39 C.F.R. § 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement (Agreement) with Hongkong Post.¹ The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements

¹ United States Postal Service Notice of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, December 24, 2013 (Notice).

with Foreign Postal Operators 1 (Foreign Postal Operators 1) product. For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission added the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, and concurrently included two agreements within that product.² The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence, including an existing agreement with Hongkong Post (2013 Agreement).³

Postal Service Notice. The Notice identifies the instant Agreement as a successor to the 2013 Agreement and states that it results in an improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items. Notice at 1-5. It also addresses other data and information requirements in the Commission rules. *Id.* at 5-9.

The Notice includes an application for non-public treatment of materials filed under seal (Attachment 1) and a redacted version of the Agreement (Attachment 2).

The Postal Service explains that this proceeding involves only those parts of the Agreement that involve delivery of small packets with delivery scanning in the United States that are tendered by a foreign postal operator, *i.e.*, negotiated rates for inbound market dominant products. Notice at 4-5.

Initial Commission action. On December 26, 2013, the Commission issued an order establishing a docket for consideration of matters raised in the Notice, inviting

² See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

³ See Docket No. R2013-3, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Hongkong Post), December 28, 2012 (Order No. 1597).

public comment, and appointing a Public Representative to represent the interests of the general public.⁴

Scope of Agreement; effective date and duration. The Agreement includes negotiated pricing for various inbound small packets with delivery scanning. Notice at 3. Rates pursuant to the Agreement are intended to take effect March 1, 2014. *Id.* at 2; Attachment 2 at 6. The Agreement is set to expire one year after the effective date, unless terminated sooner pursuant to contractual terms or extended by amendment. *Id.* at 5, 6.

III. THE POSTAL SERVICE'S POSITION

Statutory and regulatory requirements. 39 U.S.C. § 3622(c)(10)(A)(i) requires that the Agreement improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to its institutional costs. The Postal Service states that it provides required information about expected financial improvements, costs, volumes, and revenues in the sealed financial workpapers. Notice at 3.

39 U.S.C. § 3622(c)(10)(A)(ii) requires that the Agreement enhance the performance of mail preparation, processing, transportation, or other functions. The Postal Service states that the Agreement includes the following operational and other improvements: (1) the establishment of a process for collecting tracking events associated with small packets with delivery scanning; and (2) the establishment of improved accounting and settlement processes. *Id.* at 3-4.

39 U.S.C. § 3622(c)(10)(B) requires that the Agreement not result in unreasonable harm to the marketplace. The Postal Service represents that it is unaware of any private entity that would be able to serve the United States market for inbound small packets with delivery scanning from Hong Kong on the terms and scale

⁴ Order No. 1928, Notice and Order Concerning Hongkong Post Negotiated Service Agreement, December 26, 2013.

contemplated in the Agreement and concludes that it is unlikely to pose competitive harm to the marketplace. *Id.* at 4.

39 U.S.C. § 3622(c)(10) requires that agreements be made available on reasonable terms to similarly situated mailers. The Postal Service states that under rules set by the UPU, there are no entities similarly situated to Hongkong Post that can serve as a designated operator for mail either originating in Hongkong or destined for the United States. *See id.* Consequently, the Postal Service states that the market for these services is limited to its parties. *Id.*

Functional equivalence. The Postal Service states that the Agreement is functionally equivalent to the agreements previously included within the Foreign Postal Operators 1 product because it is very similar to the 2013 Agreement between Hongkong Post and the Postal Service as it relates to inbound market dominant services. *Id.* at 7. The Postal Service represents that, as with the 2013 Agreement, the relevant terms of the Agreement fit within the Mail Classification Schedule (MCS) language for the Foreign Postal Operators 1 product, and that the two agreements therefore conform to a common description. *Id.* The Postal Service also claims that the agreements share a common market. *Id.*

The Postal Service states that the main difference between the two agreements is that in the instant Agreement, inbound market dominant rates are only provided for inbound small packets with delivery scanning, while the 2013 Agreement also provided rates for inbound registered mail. *Id.* The Postal Service, therefore, submits that the Agreement is functionally equivalent to the 2013 Agreement and should be added to the market dominant product list within the same product grouping. *Id.* at 8.

The Postal Service also maintains that, with regard to inbound small packet flows, the agreements have similar cost characteristics. *Id.* at 7. The Postal Service also states that, with regard to inbound small packets with delivery scanning, the financial model used to project costs and revenues offered under the Agreement is similar to the model used in the 2013 Agreement. *Id.* at 7-8. It notes that while there are other minor differences between the instant Agreement and the 2013 Agreement,

these differences do not detract from the conclusion that the instant Agreement is functionally equivalent to the 2013 Agreement. *Id.* at 8-9.

Reporting exceptions. Under 39 C.F.R. § 3010.43, the Postal Service is to provide a detailed plan for providing data or information on actual experience under the Agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. § 3622(c)(10). The Postal Service proposes that no special data collection plan be created for the Agreement because it intends to report information on the Agreement through the Annual Compliance Report (ACR) process, along with any necessary information about mail flows from Hongkong Post. *Id.* at 5. The Postal Service cites Order No. 996 as a standing exception to separate service performance reporting (otherwise required under rule 3055.3(a)(3)) for all agreements filed within the Foreign Postal Operators 1 product.⁵

IV. COMMENTS

The Public Representative filed comments on January 10, 2014.⁶ No other comments were received. The Public Representative's review of the Agreement and its associated financial workpapers leads him to conclude that the Agreement is likely to improve the net financial position of the Postal Service. PR Comments at 3. The Public Representative also concludes that the Agreement is functionally equivalent to the 2013 Agreement. *Id.* at 4.

Functional equivalence. The Public Representative believes that the 2013 Agreement is an appropriate baseline for the instant Agreement. *See id.* at 3. He concludes that the differences specified by the Postal Service do not affect the similarity

⁵ *Id.* at 5-6; *see also* Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 8-9 (Order No. 996).

⁶ Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and Hongkong Post 2014 Bilateral Negotiated Service Agreement, January 10, 2014 (PR Comments).

of the cost characteristics between the two agreements and considers the instant Agreement to be functionally equivalent to the 2013 Agreement. *Id.* at 4.

Consistency with statutory criteria. The Public Representative notes that under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the Agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* at 3. With respect to the first criterion, the Public Representative concludes that based on the negotiated rates, the Agreement will improve the net financial position of the Postal Service. *Id.* at 4. With respect to the second and third criteria, the Public Representative states that the Postal Service makes reasonable arguments that these criteria are not implicated by the Agreement. *Id.* at 3.

V. COMMISSION ANALYSIS

The Commission has reviewed the Postal Service's filing and comments filed by the Public Representative.

Statutory and regulatory responsibilities. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. §§ 3010.40(a) and (b), the Agreement must either improve the net financial position of the Postal Service or enhance the performance of various operational functions and must not cause unreasonable harm to the marketplace. The Agreement also must be available on public and reasonable terms to similarly situated mailers. 39 C.F.R. § 3010.40(c).

The Commission finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(i), that the negotiated rates in the Agreement should improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. It also finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(ii), that the Agreement includes several provisions intended to enhance performance. With respect to 39 U.S.C. § 3622(c)(10)(B), the Commission finds that the Agreement should not cause unreasonable harm to the marketplace,

given the contracting parties' status as designated postal operators and the prohibition against entities other than the Postal Service from carrying inbound international letters commercially (at least those below certain price and weight thresholds) after entry at a U.S. port.

Functional equivalence. The Commission finds that the differences the Postal Service identifies between the 2013 Agreement and the instant Agreement do not foreclose a finding of functional equivalence. The Commission therefore concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, and revises the MCS as shown in the attachment following the Secretary's signature.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, requesting, consistent with the exception granted in Order No. 1078, that it be permitted to report information related to the Agreement in its ACR. Notice at 5. The Postal Service cites Order No. 996, which established a standing exception to the service performance reporting under 39 C.F.R. § 3055(a)(3) for Foreign Postal Operators 1 agreements, as support for an exception for this Agreement. *Id.* Consistent with Order Nos. 1078 and 996, the Commission grants an exception from the requirements of rule 3010.43.

Follow-up submissions. The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than intended or is extended by amendment. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

The Commission notes that UPU default rates (for use in the cost coverage test) have been published for Calendar Year (CY) 2014, but not for CY 2015, which constitutes a portion of the Agreement's term. Once the UPU default rates for CY 2015 become available, the Postal Service shall promptly supplement its filing in this case to confirm that cost coverage under the negotiated rates for CY 2015 is greater than the cost coverage under UPU default rates.

Future Foreign Postal Operators 1 filings. The Postal Service's filings in the instant docket do not include an explicit analysis comparing the cost coverage under UPU default rates to the cost coverage under the Agreement's negotiated rates. Shortly after the Postal Service filed its Notice, the Commission issued Order No. 1931, which addressed the inclusion of such analysis and directed the Postal Service to include data and information used in the net improvement comparison of an agreement's negotiated rates to UPU default rates.⁷ Consistent with Order Nos. 1058 and 1931, future Foreign Postal Operators 1 filings shall include data and cite with specificity to the source(s) of the UPU default rates used in the net improvement comparison.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product.
2. The Commission approves the Type 2 rate adjustment requested in the Postal Service's December 24, 2013 Notice filed in this proceeding.
3. If the Agreement terminates early, the Postal Service shall notify the Commission within 30 days of the termination date. The Postal Service shall also promptly notify the Commission if the Agreement is extended.

⁷ See Docket No. R2014-2, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Australian Postal Corporation), December 30, 2013 (Order No. 1931). See also Docket No. R2012-4, Order Approving Request to Include Hongkong Post Group Bilateral Agreement Within an Existing Market Dominant Product, December 20, 2011 (Order No. 1058).

4. Within 30 days of expiration, or upon early termination of the Agreement, the Postal Service shall file cost, volume, and revenue data associated with the Agreement.
5. Consistent with Order Nos. 1078 and 996, the Postal Service's request for an exception to the data reporting requirements in Commission rule 3010.43 is granted.
6. Future Foreign Postal Operators 1 filings shall include supporting financial workpapers consistent with Order Nos. 1058 and 1931.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products

1602.3 Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators

1602.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5, and R2010-6

PRC Order No. 549, September 30, 2010

Included Agreements

Hongkong Post–United States Postal Service Letter Post Bilateral Agreement, ~~R2013-3~~ R2014-4, expires February, 28, ~~2014~~ 2015
